

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

*In re Inogen, Inc. Shareholder Derivative  
Litigation*

Civil Action No. 1:19-cv-01723-MN-JLH

(Consolidated with Case No. 1:19-cv-01968)

This Document Relates to:

ALL ACTIONS

**JOINT STIPULATION AND [PROPOSED] ORDER REGARDING VOLUNTARY  
DISMISSAL OF ACTION**

Defendants Scott Wilkinson, Alison K. Bauerlein, Heath Lukatch, Raymond O. Huggenberger, Benjamin M. Anderson-Ray, Scott A. Beardsley, Loren L. McFarland, Heather D. Rider, R. Scott Greer, and Nominal Defendant Inogen, Inc. (“Inogen”) (collectively, “Defendants”), by and through their counsel, and plaintiff Dustin Weller (“Plaintiff”) (Plaintiff and Defendants, together, the “Parties”), by and through his counsel, hereby stipulate to the following:

WHEREAS, on September 13, 2019, Plaintiff filed a putative Verified Stockholder Derivative Complaint for Violations of Federal Securities Laws, Breach of Fiduciary Duty, Waste of Corporate Assets, and Unjust Enrichment (Dkt No. 1, the “Complaint”);

WHEREAS, on May 15, 2020, the Court granted Plaintiff Dustin Weller’s Motion for Consolidation and Appointment of Lead Counsel (Dkt No. 38)<sup>1</sup>;

WHEREAS, on July 8, 2020, this Court so-ordered the Parties’ stipulation to temporarily

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<sup>1</sup> On May 29, 2020, Plaintiff Shahrokh Soltanipour filed an Objection to the Magistrate Judge’s Order (Dkt No. 40). Despite Plaintiff Soltanipour’s filing of an objection, it is the understanding of the parties to this stipulation that the Magistrate Judge’s Order continues to “govern further proceedings.” Standing Order at ¶ 8.

defer proceedings in this action pending the outcome of the motion to dismiss the related securities class action in the United States District Court for the Central District of California, captioned *In re Inogen, Inc. Securities Litigation*, Master File No. 2:19-cv-01643-FMO-AGR (the “Securities Class Action”)<sup>2</sup> (Dkt. No 45 (the “Temporary Deferral of Proceedings”));

WHEREAS, on September 27, 2021 the Securities Class Action was dismissed and judgment entered;

WHEREAS, plaintiffs in the Securities Class Action had until October 27, 2021 to appeal the dismissal of the Securities Class Action, which they elected not to pursue;

WHEREAS, on October 27, 2021, the Parties filed a Stipulated [Proposed] Order seeking to extend the Temporary Deferral of Proceedings an additional seven days to allow them to assess the impact of any appeal of the dismissal of the Securities Class Action on this action given the fact that any such appeal may have affected the appropriate schedule for further proceedings in this action;

WHEREAS, pursuant to Federal Rules of Civil Procedure 23.1 and 41(a)(2), Plaintiff now wishes to voluntarily dismiss this action without prejudice;

WHEREAS, the Parties respectfully submit that notice of this dismissal to Inogen shareholders is unnecessary to protect the interests of the company and its shareholders for the following reasons: (i) the dismissal is without prejudice; (ii) there has been no settlement or compromise; (iii) there has been no collusion between the Parties; and (iv) neither Plaintiff nor his counsel will receive any consideration in exchange for or in connection with the voluntary

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<sup>2</sup> In addition to the Securities Class Action, there is a consolidated derivative action pending against Inogen and certain of its officers and directors in the federal district court for the Central District of California captioned *In re Inogen, Inc. Derivative Litigation*, Lead Case No. CV 19-5568-FMO (AGRx).

dismissal of this action;

WHEREAS, the Parties agree that all Parties shall bear their own fees, costs, and expenses incurred in connection with this action;

WHEREAS, no Party will assert or seek sanctions in this action on the ground that any other party or counsel of record acted in bad faith;

WHEREAS, the Court has discretion under Rule 23.1(c) to determine whether notice needs to be disseminated in a given case and also has discretion under Rule 41(a)(2) to order dismissal of an action without prejudice at the plaintiff's request "on terms that the court considers proper"; and

WHEREFORE, the Parties, through their undersigned counsel, hereby agree, stipulate, and respectfully request that the Court enter an Order as follows:

1. The above-captioned action shall be dismissed without prejudice pursuant to Federal Rules of Civil Procedure 23.1 and 41(a)(2);
  2. Notice of the proposed dismissal need not be disseminated to Inogen shareholders;
- and
3. Each Party shall bear his, her, or its own attorneys' fees, costs, and expenses.

IT IS SO STIPULATED.

Respectfully submitted,

Dated: November 3, 2021

**COOCH AND TAYLOR, P.A.**

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Dated: November 3, 2021

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*Counsel for Defendants*

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IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2021

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The Honorable Maryellen Noreika